In Georgia it is held that the beneficiary of a valid spendthrift trust cannot alienate the trust property and thereby defeat the object of the trust. *Moore* v. *Sinnott*, 117 Ga. 1010, 44 S. E. 810. In this connection, see *Wright* v. *Leupp*, 70 N. J. Eq. 130, 62 Atl. 464.

A beneficiary may, by a trust deed, convey his equitable estate without a joinder of the trustee. *Ryland* v. *Banks*, 151 Mo. 1, 51 S. W. 720. The estate of a beneficiary is an equitable estate whatever may be its limits, and such estate is not recognized by the common law. The trustee cannot limit or trammel the right of a beneficiary to dispose of his equitable estate. See MERWIN, EQUITY, §§ 144, 205.

WILLS—CHARITIES—BEQUEST FOR MASSES.—A testator by his will authorized and directed his executors to sell certain lands and expend the proceeds for masses for the benefit of himself and his deceased wife, naming neither parish nor priest. *Held*, the bequest is valid. *Wilmes* v. *Tiernay* (Iowa), 174 N. W. 271.

In England it has been established by a long line of decisions and by the statute of 1 Edw. VI, chap. 14 that a bequest for masses for the repose of one or an indefinite number of souls is invalid as a superstitious use. *West* v. *Shuttleworth*, 2 My. & K. 684; *Heath* v. *Chapman*, 2 Drew. 417; *In re Blundell's Trusts*, 30 Beav. 360; *In re Fleetwood*, L. R. 15 Ch. D. 595, 609. The doctrine of superstitious uses is universally repudiated in this country as being contrary to the first amendment to the Federal Constitution and repugnant to the spirit of religious freedom. *Harrison* v. *Brophy*, 59 Kan. 1, 51 Pac. 883, 40 L. R. A. 721; *Festorazzi* v. *St. Joseph Church*, 104 Ala. 327, 18 South. 394, 25 L. R. A. 360; *Holland* v. *Alcock*, 108 N. Y. 312, 16 N. E. 305.

A bequest for masses, then, must be upheld on one of three grounds: (1) that it is an absolute gift to the beneficiary named, with a request that it be used for masses; (2) that a valid charitable use is created; or (3) that a valid private trust is created. If the bequest cannot be brought under one of these three heads, it must fail. See *Festorazzi* v. *St. Joseph Church*, *supra*; *Sherman* v. *Baker*, 20 R. I. 446, 40 Atl. 11, 40 L. R. A. 717.

One line of cases upholds the bequest as an absolute gift accompanied by precatory words which do not raise a charitable trust. *Harrison* v. *Brophy*, *supra*; *Sherman* v. *Baker*, *supra*. Where a testator bequeathed to a bishop a certain sum of money "to have the same amount of masses celebrated as soon as possible for my soul," it was held that an outright gift was intended and a charitable trust was not created. *Estate of Lennon*, 152 Cal. 327, 92 Pac. 870, 14 Ann. Cas. 1024. The court based its decision on the fact that there was no benefit to the public or any class of the public, that the elements of continuance and perpetuity were lacking, and that the benefit was for the testator alone. There can be no objection to an absolute bequest with a request that it be used in a certain manner, if the act requested is not against public policy or a settled rule of law. *Holland* v. *Alcock*, *supra*; *Harrison* v. *Brophy*, *supra*.

A second class of cases holds that such a bequest creates a charitable trust which the courts can and will enforce. *Hoeffer* v. *Clogan*, 171

Ill. 462, 49 N. E. 527, 40 L. R. A. 730, 63 Am. St. Rep. 241; *Schouler, Petitioner*, 134 Mass. 426. The wording of the instrument giving the bequest which has led the courts to this conclusion does not differ from the wording which has given rise to the first line of cases. Where a testator bequeathed to a named priest a certain sum "for masses for the repose of" certain named souls, the bequest was upheld as a charitable trust. *Coleman* v. *O'Leary*, 114 Ky. 388, 70 S. W. 1068. Where the will states that the fund is given in trust for masses, the court can uphold the bequest only as a charitable trust. See *McHugh* v. *McCole*, 97 Wis. 166, 72 N. W. 631, 40 L. R. A. 724; *Holland* v. *Alcock*, *supra*. Some courts have objected that for a valid trust the beneficiaries are too indefinite, since it is admitted that a disembodied spirit cannot be a legal beneficiary. This difficulty has been overcome by holding that all in attendance at the mass derive spiritual comfort and help therefrom and that the public is thus benefited by the trust. *Hoeffer* v. *Clogan*, *supra*; *In re Kavanaugh's Estate*, 143 Wis. 90, 126 N. W. 672, 28 L. R. A. (N. S.) 470, overruling *McHugh* v. *McCole*, *supra*. Following a well-known equitable maxim, the courts will not allow such a trust to fail for want of a trustee. *Hoeffer* v. *Clogan*, *supra*; *Schouler, Petitioner*, *supra*. If the court takes this view of the matter, there seems to be no reason why the trust should not be held valid and its purpose effected as the testator desired. For other cases holding this view, see *Kerrigan* v. *Tabb* (N. J.), 39 Atl. 701; *Webster* v. *Sughrow*, 69 N. H. 380, 45 Atl. 139, 48 L. R. A. 100; *Ackerman* v. *Fichter*, 179 Ind. 392, 101 N. E. 493, Ann. Cas. 1915D, 1117.

The view that a private trust is created is upheld in but one case. *Moran* v. *Moran*, 104 Iowa 216, 73 N. W. 617, 39 L. R. A. 204, 65 Am. St. Rep. 443. The decision is based on the analogy to a bequest for the erection of a monument or any other posthumous work. The instant case was decided in the same jurisdiction and extends the doctrine much further. It is distinctly held that a public trust is created and that the failure to name either priest or parish is immaterial since the efficacy of the mass is not dependent upon the place or the celebrant.

It will be noted that the American courts usually find some ground on which to uphold the bequest for masses. But all three grounds have been repudiated in the widely cited cases of *Festorazzi* v. *St. Joseph Church*, *supra*. And where the bequest was in trust *eo nomine*, it was held invalid, but the court stated as a *dictum*, that an absolute gift with a request not amounting to a trust would be upheld. *McHugh* v. *McCole*, *supra*. But this case has been overruled in that jurisdiction and the doctrine of charitable trusts adopted. *In re Kavanaugh's Estate*, *supra*. Where charitable trusts are held illegal, it has been held that the trust fails. *Holland* v. *Alcock*, *supra*. But it seems that this has been changed by statute in that particular jurisdiction. See *In re Zimmerman*, 22 Misc. Rep. 411, 50 N. Y. Supp. 395. It seems that bequests for masses have frequently been upheld in the lower courts of record in New York. See cases collected in note, 14 Ann. Cas. 1028.